

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 817 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

ANIL CYCLE TRADING CO.

Versus

OM PRAKASH RAMCHANDRA SHARMA

Appearance:

MR ASHOK L SHAH for Petitioner

MR NS DESAI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/03/99

ORAL JUDGEMENT

Rule. Mr NS Desai, learned counsel for the respondent.

2. For the reasons which are already recorded in the order dated 28.1.1999 passed by this Court in this revision application, Mr Ashok L Shah, learned counsel for the petitioner was called upon to state as to whether Anilkumar Jagdishchandra Varma was a partner of the

plaintiff-Anil Cycle Trading Company on the date on which the cause of action accrued. Today, Mr Shah has produced an attested true copy of the entry in the Register of Firms showing that Jagdishchandra Kaluram Varma and Anilkumar Jagdishchandra Varma had joined Anil Cycle Trading Company on 6.8.1974. According to the learned counsel for the respondent, the cause of action accrued in the year 1979. Hence, it is obvious that Anilkumar was a partner of the plaintiff firm when the cause of action is stated to have accrued.

3. It is surprising that although the suit in question being Civil Suit No. 395 of 1987 was filed by M/s Anil Cycle Trading Company i.e. a partnership firm, and the plaint was also signed and verified by Jagdishchandra Varma in his capacity as a partner of the plaintiff firm, the learned trial Judge has observed in para 5 of the impugned order that Jagdishchandra Varma was the plaintiff and, therefore, his son Anilkumar has no right to sign the application for restoration of the suit which was earlier dismissed for default.

4. The learned counsel for the respondent is also not in a position to dispute the fact that the suit was filed by the partnership firm and not by Jagdishchandra Varma in his individual capacity.

5. In view of the aforesaid discussion, the order dated 27.2.1998 passed by the learned Civil Judge (S.D.), Nadiad below Civil Misc. Application No. 10 of 1997 is set aside. It is held that the restoration application as well as the delay condonation application signed by Anilkumar Jagdishchandra Varma are maintainable and the learned trial Judge shall proceed to hear and decide the same in accordance with law by treating the same as maintainable.

6. This revision application is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

March 9, 1999 (M.S. Shah, J.)

sundar/-